IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.81 of 2006.

Date of decision: 14.8.2006.

Raj Rani and others ….Petitioners.

-Versus-

Naresh Kumar Puri and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? yes

For the Petitioners: Mr.T.S.Chauhan, Advocate.

For Respondents 1&2: Mr.Onkar Jairath, Advocate

Deepak Gupta, J.(Oral)

This petition has been filed by three sisters who are the daughters of late Sh.Jagdish Chand Puri who was admittedly a tenant in the premises in dispute.

Brief facts leading to the filing of the present petition are that the tenanted premises which are non-residential in nature were rented out to late Sh.Jagdish Chand Puri on rental of Rs.25/- per month w.e.f. 1.11.1969. The landlords filed a petition for eviction of the original tenant on 25.6.1991. When the matter was pending before the Rent Controller the tenant Sh.Jagdish Chand Puri died and his sons Avinash Puri and Nand Lal Puri were impleaded as respondents being his legal representatives. They contested the claim petition and finally an order of eviction was passed against them on the ground that the tenant was in arrears of rent and had

ceased to occupy demised premises for a period of more than 12 months prior to the filing of the eviction petition.

Feeling aggrieved, the tenants preferred an appeal before the learned Appellate Authority, Una only in respect of the finding of the Rent controller that the tenants had ceased to occupy the tenanted premises without reasonable cause for a period of more than 12 months preceding to the date of filing of the eviction petition. The learned Appellate Authority upheld the finding of the learned Rent Controller and dismissed the appeal. The tenants thereafter filed a Revision Petition being C.A. No.275 of 1998 before this Court which was dismissed on April 11, 2002. It would be pertinent to mention that in that petition the tenants also raised a contention that the eviction petition was bad because all the legal heirs of the original tenant Jagdish Chand Puri (since deceased) who had succeeded to the tenancy i.e. widow and daughters had not been impleaded as parties. This contention was rejected by this Court on the ground that this plea had not been raised either before the Rent Controller or before the Appellate Authority. Thereafter, the tenants that is the sons of late Sh.Jagdish Chand Puri and brothers of the present petitioners filed a Special Leave Petition in the Apex Court which was dismissed on 7.10.2002. A Review Petition was filed in the Apex Court which was also dismissed on July 24, 2003.

After the culmination of the proceedings before the Apex Court the landlords filed the execution proceedings before the Rent Controller. When the Rent Controller directed that the possession of the premises be handed over to the landlords in execution

proceedings the present petitioners who are the daughters of the original tenant filed objections before the Rent Controller. In these objections the present petitioners claimed that they had also inherited the tenancy and as such they have a right to contest the proceedings. These objections filed by them had been dismissed by the learned Rent Controller vide order dated 14.6.2006 and hence the present petition.

Mr.T.S.Chauhan, appearing for the petitioners has cited a large number of judgments. All the judgments are only to the effect that under the H.P. Urban Rent Control Act on the death of a tenant occupying commercial premises, his tenancy is inherited by all his legal heirs. This legal position is not disputed. In the present case the petition was filed against the original tenant. When the tenant died his two sons were impleaded as legal representatives in his place. They never raised any objection that the present petitioners should also be impleaded as parties. Even the petitioners did not deem it fit to approach Rent Controller with a plea that they should also be impleaded as parties. If they had been in possession of the premises they would have definitely been aware of the pendency of the petition and should have approached the Court to implead them as parties. The proceedings went on for almost 13 years without the present petitioners ever raising any contention that they should be impleaded as respondents in the case. The brothers contested the petition of the landlord, tooth and nail till the Apex Court. It was only after the execution proceedings were filed and orders for breaking open the locks were passed that the present petitioners filed

the objections. Now the sisters would have this Court believe that their brothers who contested the case right upto the Apex Court have colluded with the landlords. This cannot be believed.

It is well settled law that the heirs of an original tenant succeed to his tenancy on his death as joint tenants. Service of notice of proceedings to one of the tenants is sufficient notice to all. Reference in this behalf may be made to the judgment of the Apex Court in **H.C. Panday vs. G.C. Paul, (1989) 3 SCC 77,** wherein the Apex Court held as follows:

> "It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negativing or limiting the succession, the tenancy rights devolve on the heirs of the deceased by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefore. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants that he paid rent on behalf of all and he accepted notice also on behalf of all. In the circumstances, the notice served on the respondent was sufficient. It seems to use that the view taken in Ramesh Chand Bose is erroneous where the High Court lays down that the heirs of the deceased tenant succeed as tenant in common. In our opinion, the notice under Section 106 of the Transfer of Property Act served by the appellant on the respondent is a valid notice and therefore, the suit must succeed."

It would be pertinent to mention that the aforesaid judgment of the Apex Court has been followed by this Court in **Naresh Sharma and others vs. Ramesh Chand and others, 1999 (2) S.L.J. 1525.**

A perusal of the judgment of the Apex Court clearly shows that it is a single tenancy which devolves upon the heirs and there is no division of the premises or of the rent payable thereof. Applying the ratio of the said case to the present petition it is clear that the brothers acted on behalf of all the tenants and contested the petition on behalf of the entire body of the tenants. They represented the estate of the deceased. After having contested the case till the Apex Court for 12 years and having lost throughout the brothers by subterfuge are now trying to bring forward the sisters to avoid and delay the eviction. The proceedings have been pending for almost 15 years now and the tenants have lost at every stage. It would be a mockery of justice if they are permitted to raise such objections at this stage.

In my view, in the present case, the tenants have successfully avoided their eviction on wholly untenable grounds. The petition is without any merit and is dismissed with costs assessed at Rs.3000/-.

CMP No.318 of 2006:

In view of the dismissal of the Revision Petition, this application is also dismissed.

August 14, 2006.
PV

(Deepak Gupta),
Judge